



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-179338

December 21, 1973

Continental Service Company  
RD 2  
Federalsburg, Maryland 21632

Attention: Mr. Henry S. Mauk  
President

Gentlemen:

We refer to your correspondence dated July 23 and August 1, 1973, protesting against the cancellation of invitation for bids (IFB) No. DSA600-73-B-0270, and resolicitation of bids under IFB No. DSA600-74-B-0046, by the Defense Fuel Supply Center (Center), Cameron Station, Alexandria, Virginia.

The initial invitation was issued May 9, 1973, for the operation, maintenance and protection of the Government-owned petroleum terminal at Searsport, Maine, and as amended, included the "Fair Labor Standards Act—Price Adjustment" clause. The invitation included a Department of Labor Wage Determination which provided for a minimum wage of \$2.42 per hour for guards and watchmen. Bids were opened July 10, 1973, and the following annual bid prices based on a "per month" charge were received:

<u>Bidder</u>	<u>Monthly Charge</u>
Continental Service Inc.	\$15,857.13
Marine Consultants Corp.	16,138.94
Process Operators, Inc.	16,275.43
Vast, Inc.	20,842.00

In addition, a late bid was received from Tenco Services, Inc., in the monthly amount of \$16,971.01. All bidders also offered to perform the required services on a multi-year basis at substantially similar prices.

The Center reports that on July 16, 1973, it was informally advised that the \$2.42 minimum wage rate was to be superseded by a new minimum wage of \$2.79 per hour. On July 18, 1973, the Department of Labor issued Wage Determination 69-263(Rev. 5) showing this revised rate. As a result of this development, the Center on

*[Protest of IFB Cancellation]*  
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July 23, 1973, cancelled IFB - 0270, and on the same day issued IFB - 0046 for identical services, incorporating by reference all terms and conditions of the first solicitation. Bidders were informed, however, that the applicable minimum wage was \$2.79 per hour. Bid opening was scheduled for July 31, 1973, and telegraphic bids were authorized.

By telegram of July 24, 1973, you protested against cancellation of the first invitation. Thereafter, on July 31, 1973, the following 4 bids were received by the Center:

<u>Bidders</u>	<u>Monthly Charge</u>
Process Operators, Inc.	\$16,830.43
Marine Consultants, Inc.	16,915.00
Continental Services, Inc.	17,271.71
Vast, Inc.	21,853.92

Again, the multi-year bids received reportedly did not affect the ranking of the bidders. Award was made to the low bidder under the solicitation as the then current contract expired on October 3, 1973.

By telegram dated August 1, 1973, you also have contended that the two low bids under the second invitation are too low to provide "the minimum standards of responsibility and proper performance of the contract." You allege further that "Process Operators' bid of \$555.00 is not responsive" and that Marine Consultants "do not have any prior experience in the operation of petroleum terminals".

In the absence of any evidence to support your assertion regarding the bid price, we find no basis to sustain this aspect of your protest. With regard to your contention that Process Operators' bid was nonresponsive, it is clear that Process Operators agreed to all the terms and conditions of the second solicitation for a monthly charge of \$555.00 above its monthly bid price under the first solicitation and that it did not intend its total monthly bid price to be only \$555.00. Therefore, we find no merit to your contention in this regard. Since Marine Consultants did not receive the award, your contention concerning its lack of experience is not relevant.

With regard to cancellation of the first solicitation, the contracting officer explains the basis for this action as follows:

"In most instances due to the need to make immediate awards for services that are covered by an expiring contract, pursuant to this provision [ASPR 12-1005.3(n)] award is made against the unrevised wage rate. In this particular solicitation, however, sufficient time existed before the expiration of the existing contract to cancel the solicitation and re-advertise. Based on this, the Contracting Officer considered that the wage rate revision constituted a 'compelling reason' for cancellation within the meaning of ASPR 2-404.1 \* \* \* and the general policy to insure the payment of prevailing wages to employees of service contracts."

Generally, ASPR 2-404.1 provides that preservation of the competitive bid system requires that once bids have been opened an award must be made. However, the regulation also provides that where there is a compelling reason all bids may be rejected and the procurement resolicited. In addition to listing several specific reasons justifying such action, ASPR 2-404.1 (b) (viii) permits cancellation where "for other reasons, cancellation is clearly in the best interest of the Government." In this connection, our Office has consistently held that there necessarily is reserved in the contracting officials a substantial amount of discretion in determining whether or not an invitation should be cancelled and, therefore, we will not object to the cancellation of an invitation unless there has been a clear showing of abuse of administrative discretion. 49 Comp. Gen. 584,586 (1970).

We recognize that ASPR 12-1005.3(a)(ii) permits the contracting officer to proceed with a procurement with an existing wage determination if an award may not be delayed pending incorporation of a revised wage determination. However, the regulation does not preclude the contracting officer from incorporating a new wage determination where there is a reasonable time to notify bidders of the revision. Moreover, as noted by the contracting officer, sufficient time existed before expiration of the current contract to resolicit on the basis of the revised rates and by incorporating the revised rates in the contract

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the purpose of the Service Contract Act, to provide protection to service employees, would be advanced. In these circumstances, we are unable to conclude that there was an abuse of the discretion vested in the contracting officer.

Accordingly, your protest is denied.

Sincerely yours,

R.F.KELLER

[Deputy Comptroller General  
of the United States